

1 March 2018

Ryan Lee Zater #96908-071  
FCI Miami Low  
P.O. Box 779800  
Miami, Florida 33177

Clerk of the Court  
Lexington County Judicial Center  
205 East Main Street  
Lexington, S.C. 29072

LISA M. COMER  
CLERK OF COURT  
LEXINGTON, SC

2018 MAR -5 PM 4:27

FILED

RE: Case No. 2015-CP-32-02363

Dear Ms. Comer,

Enclosed herewith please find for filing in your court  
a copy of the Notice of Appeal in the above case.

I thank you for your assistance in this matter.

Sincerely,

  
\_\_\_\_\_  
Ryan Lee Zater

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON  
IN THE COURT OF COMMON PLEAS

Ryan Lee ZATER, )  
FBOP No. 96908-071 )  
Applicant, ) Case No.  
vs. ) 2015-CP-32-023  
STATE of South Carolina, )  
Respondent. )  
\_\_\_\_\_ )

LISA M. COHER  
CLERK OF COURT  
LEXINGTON SC

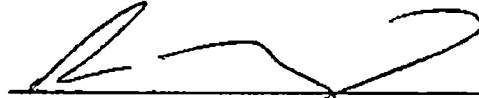
2018 MAR -5 PM 4: 27

FILED

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Ryan Lee Zater, Applicant pro se, hereby appeals this Court's Order dated 22 February 2018. He takes this appeal to the South Carolina Court of Appeals.

Respectfully submitted,



Ryan Lee Zater #96908-071  
FCI Miami Low  
P.O. Box 779800  
Miami, Florida 33177  
Pro se

1st day of March 2018

cc: Anthony Mabry, Esq.  
file

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

ORIGINAL

CASE NO. 2015-CP-32-02363

Ryan Lee ZATER, F.B.O.P. No. 96908-071

The STATE of South Carolina,  
Respondent,

Applicant,

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other

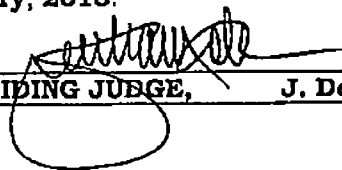
IT IS ORDERED AND ADJUDGED:  See formal order to follow;  Statement of Judgment by the Court:

This matter came before this court on motion of the State regarding an application for post-conviction relief pursuant to *South Carolina Code Annotated Section 17-27-20*.

At a hearing scheduled in this matter the State moved to dismiss the application with prejudice on the ground(s) that; (1) the application fails to state a cognizable claim pursuant to S. C. Code Ann. Section 17-27-20(A); (2) it was not filed within the applicable statute of limitations established by S. C. Code Ann. Section 17-27-45(A); and (3) it is barred by the equitable doctrine of laches. The applicant was present via telephone and not represented by counsel and for appointment of counsel in the event the State's motion was not granted.

Good cause having been shown, the State's motion to dismiss the application for post-conviction relief should be and is therefore granted and the application is dismissed with prejudice.

Dated at Lexington, South Carolina, this 22<sup>nd</sup> day of February, 2018.

  
 \_\_\_\_\_  
 PRESIDING JUDGE, J. Derham Cole

This judgment was entered on the 26 day of Feb, 2018, and a copy mailed first class this day of Feb, 2018 to attorneys of record or to parties (when appearing pro se) as follows:


Ryan Lee Zater  
FCI Miami  
Federal Correctional Institution  
P.O. Box 779800  
Miami, FL 33177

Anthony Mabry, Esq.  
Post Office Box 11549  
Columbia, South Carolina 29211-1549

ATTORNEY(S) FOR THE APPLICANT

ATTORNEY(S) FOR THE RESPONDENT

FILED  
 2018 FEB 23 PM 4:59  
 LISA M. COMERT  
 CLERK OF COURT  
 LEXINGTON SC

  
 \_\_\_\_\_  
 CLERK OF COURT

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF LEXINGTON ) FOR THE ELEVENTH JUDICIAL CIRCUIT

**FILED**

Ryan Lee Zater,  
F.B.O.P. No. 96908-071,

2017 FEB -3 )

A 11:21

Case No.: 2015-CP-32-02363

Applicant,

**CONDITIONAL ORDER OF DISMISSAL**

v.

State of South Carolina

COUNTY OF LEXINGTON  
LISA M. COMER, CLERK OF COURT  
LEXINGTON COUNTY JUDICIAL CENTER  
205 EAST MAIN STREET  
LEXINGTON, SC 29072-3494

Respondent.

**ORIGINAL**

This matter comes before the Court by way of an application for post-conviction relief filed by Ryan Lee Zater (Applicant) on July 1, 2015. Respondent made its Return, requesting the Application be summarily dismissed.

**I. PROCEDURAL HISTORY**

*WPC #1*

Applicant is in the custody of the Federal Bureau of Prisons. Applicant was indicted at the September 2000 term of the Lexington County Grand Jury for failure to stop for blue light (2000-GS-32-4280), criminal conspiracy (2000-GS-32-4281), possession of a weapon during the commission of a violent crime (2000-GS-32-4282), and two counts of assault and battery with intent to kill (2000-GS-32-4284/4285). Langdon Dwight Long, Esquire, represented Applicant. On March 28, 2001, Applicant pled guilty as indicted. The Honorable Marc H. Westbrook sentenced Applicant to imprisonment for concurrent terms of 3 years for failure to stop, 5 years for criminal conspiracy, and 20 years for each of the two counts of assault and battery with intent to kill. Judge Westbrook also sentenced Applicant to imprisonment for one consecutive term of five years for possession of a weapon during the commission of a violent crime. Applicant did not appeal.

## II. CURRENT APPLICATION

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. Legislative activity, in that;
  - a. "The U.S. Congress has submitted numerous bills<sup>1</sup> that, if passed, will dramatically reduce Zater's Federal sentence. The new sentence will be shorter than the concurrent State of SC sentence, and this will result in Zater being released from Federal prison only to go to the State prison system – directly in contravention of Judge Westbrook's edict."
2. Constitutional violation, in that;
  - a. "Zater received two sentences (one State and one Federal) for the exact same firearm used at the exact same time, which put Zater twice in jeopardy for the same conduct in violation of the Double Jeopardy Clause of the U.S. Constitution."

Applicant requests relief as follows:

- WPM  
#2
- "[M]odify the State prison sentence so it is 'co-terminate' with Zater's concurrent Federal sentence (Case No. 3:00-626-001); suspend the remainder of Zater's State sentence as satisfactorily completed; remove the 5-year consecutive State sentence for the firearm since it is double jeopardy; and any and all further relief deemed just and proper."

Also before the Court are the Lexington County Clerk of Court records regarding the subject convictions and the records of this current PCR action.

## III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Failure to State a Claim

The Court finds the Application must be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;

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<sup>1</sup> Respondent cannot discern precisely which bills Applicant is referring to.

2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A).

WPA  
#3

Applicant's first allegation does not support a cognizable claim for post-conviction relief under any of the statutory grounds. Post-conviction relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Claims that affect only the duration of the sentence or quality of the inmate's confinement do not affect the validity of the conviction or sentence and, therefore, are considered non-collateral attacks on the conviction. Cooper v. State, 338 S.C. 202, 525 S.E.2d 886 (2000). As stated in Cooper, by challenging the duration of the sentence, the Applicant is in fact trying to enforce the sentence and is, therefore, not making a collateral attack on the conviction.

In his application for post-conviction relief, Applicant alleges the United States Congress is considering legislation that may impact his federal sentences and which could necessitate a revisiting of the alleged intentions of the deceased trial judge. Applicant's allegation is based upon his own belief that an unidentified bill may someday become law, and is thus not ripe. Further, Applicant offers no attack upon the conviction itself but instead seeks its enforcement.

For these reasons and pursuant to Rule 12(b)(6), SCRCP, the Court shall dismiss the Application for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.

### Statute of Limitations

<sup>WPC</sup> The Court also finds the application must be summarily dismissed for failure to comply <sup>WPC</sup> with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

<sup>WPC #4</sup> The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

<sup>WPC</sup> Here, Applicant pled guilty on March 28, 2001, and did not appeal. The current application was not filed until July 1, 2015—more than 13 years after the one-year statutory filing period expired. Applicant requests the Court equitably toll the statute of limitations on grounds that (1) he has been incarcerated in federal prison since his guilty plea, (2) he timely <sup>WPC</sup>

<sup>WPA</sup> filed upon learning federal law may change, and (3) he is "illiterate when it comes to legal matters."<sup>Lach</sup>

Equitable tolling is a doctrine rarely applied in South Carolina to stop the running of statutes of limitations, and is reserved for extraordinary circumstances. Pelzer v. State, 378 S.C. 516, 662 S.E.2d 618 (Cl. App. 2008). As to Applicant's first and third grounds, "ignorance of the statute of limitations is not an excuse for late filing, even when [Applicant] claims he did not learn of the statute because he was incarcerated in another state." Leamon v. State, 363 S.C. 432, 435, 611 S.E.2d 494, 496 (2005). As to Applicant's second ground, proposed federal legislation is simply not a ground for collateral attack on state criminal convictions. Therefore, the Court shall summarily dismiss the application as barred by the statute of limitations.

#### Laches

<sup>WPA</sup>  
<sup>HS</sup>  
The Court finds the application must also be dismissed as barred by the equitable doctrine of laches. To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. McElrath v. State, 276 S.C. 282, 283, 277 S.E.2d 890 (1981). Requiring reasonable diligence "guards the state's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available." Id. (quoting Honeycutt v. Ward, 612 F.2d 36, 42 (2nd Cir. 1979)). Where an applicant for post-conviction relief fails to exercise reasonable diligence, the State may seek the summary dismissal through the equitable doctrine of laches, which is defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Bray v. State, 366 S.C. 137, 140, 620 S.E.2d 743, 745 (2005) (quoting Whitehead v. State, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002)). "Whether a claim is barred by laches is to be

*WPC* determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of right does not constitute laches." Id. *WPC*

*WPC* Applicant seeks post-conviction relief more than 14 years after his conviction. Absent some explanation or justification for the delay in seeking post-conviction relief, laches will prevent an Applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to review the applicant's claims. McElrath, 276 S.C. at 283, 277 S.E.2d at 890. Applicant has offered no justification for the delay. Because of the delay, witness memories and physical evidence will have naturally faded and degraded. See, e.g., Bray, 366 S.C. at 140, 620 S.E.2d at 745 (affirming PCR judge's ruling that laches barred belated review of denial of PCR seven years after PCR hearing was held). Moreover, because of Applicant's failure to timely challenge his conviction, the tape recordings of Applicant's trial have likely been destroyed. See Rule 607, SCACR ("[A] court reporter shall retain the primary and backup tapes of a proceeding for a period of at least five years . . . and the court reporter may reuse or destroy the tapes after the expiration of that period."); State v. Serrette, 375 S.C. 650, 654 S.E.2d 554 (Ct. App. 2007) (declining to remand for reconstruction of record noting such remedy "would undoubtedly be futile considering the passage of over ten years' time" when the delay was caused by appellant). As a result, Applicant's delay in bringing this action has affected the availability of evidence for this Court to review his claims. Therefore, the Court shall summarily dismiss this application as barred by the equitable doctrine of laches. *WPC*

*WPC*  
#6

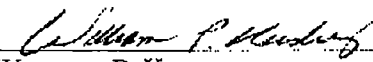
**CONCLUSION**

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Lexington County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Attn: Jessica F. Kinard, Esquire  
Johnny E. James, Jr., Esquire  
PCR Division – Eleventh Circuit  
P.O. Box 11549  
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Lexington County Clerk of Court and opposing counsel within twenty (20) days, and that the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 1<sup>st</sup> day of FEB, 2017.

  
WILLIAM P. KRESLEY  
Chief Administrative Judge  
Eleventh Judicial Circuit

Lexington, South Carolina

**ORIGINAL**

COUNTY OF LEXINGTON  
CLERK OF COURT  
LISA M. COMER, CLERK OF COURT  
LEXINGTON COUNTY JUDICIAL CENTER  
205 EAST MAIN STREET  
LEXINGTON, SC 29072-3494

**FILED**  
2017 FEB -3 A 11:21

**FORM 4**

**STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON  
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2015CP3202363**

Ryan Lee Zater #222406

State of South Carolina

**PLAINTIFF(S)**

**DEFENDANT(S)**

Submitted by:

Attorney for:  Plaintiff  Defendant  
 Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRCP;  Rule 41(a), SCRCP (Vol. Nonsuit);  
 Rule 43(k), SCRCP (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRCP;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order; (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

**This order**  ends  does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.  
**Note: Title abstractors and researchers should refer to the official court order for judgment details.**

**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

3/9/2017

Circuit Court Judge

Judge Code

Date

**For Clerk of Court Office Use Only**

This judgment was entered on the 3rd day of February, 2017, and a copy mailed first class or placed in the appropriate attorney's box on the 10th day of February, 2017, to attorneys of record or to parties (when appearing pro se) as follows:

Ryan Lee Zater, #222406  
FBOP# 96908-071  
Federal Correctional Institution  
PO Box 779800  
Miami, FL 33177

Johanna Catalina Valenzuela  
PO Box 142 Columbia, SC 29202

---

ATTORNEY(S) FOR THE PLAINTIFF(S)

---

ATTORNEY(S) FOR THE DEFENDANT(S)

*Lisa A. Comer / kr*

---

Court Reporter

---

Lisa M. Comer - Clerk of Court

**Court Reporter:**

**E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.**

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**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.